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MAILED

JUN 28 2010

In re Application of	:	OFFICE OF PETITIONS
Kuroda et al.	:	DECISION ON APPLICATION
Application No. 10/582,014	:	FOR PATENT TERM ADJUSTMENT
Filed: June 7, 2006	:	
Attorney Docket No. 04676.0237-00	:	

This is in response to the "Application for Patent Term Adjustment-Pre-Grant" filed January 27, 2010. Applicants request the initial determination of patent term adjustment be corrected from four hundred thirty-two (432) days to seven hundred twenty-seven (727) days.

The application for patent term adjustment is **dismissed**.

On November 18, 2009, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) advising applicants of a patent term adjustment to date of 432 days. In response, applicants timely filed this application for patent term adjustment prior to filing the issue fee on February 12, 2010.

After a review of the record, the Office has determined the patent term adjustment should not be increased from 432 days to 727 days.

Pursuant to 37 C.F.R. § 1.703(a)(1), the period of adjustment of patent term due to examination delay includes:

The number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

Applicants contend the application fulfilled the requirements of 35 U.S.C. § 371 on August 7, 2007. Applicants also contend the first substantive Office action was mailed 14 months and 727 days after the date the application fulfilled the requirements of 35 U.S.C. § 371.

If the application had fulfilled the requirements of 35 U.S.C. § 371 on August 7, 2007, the Office would agree an increase in patent term adjustment is appropriate. However, the application did not fulfill the requirements of 35 U.S.C. § 371 until March 28, 2007.

Applicants did not request early processing of the application under 35 U.S.C. § 371(f). Absent a request for early processing, an international application fulfills the requirements of 35 U.S.C. § 371 on the date of commencement unless the date the application meets the requirements of 35 U.S.C. § 371(c) is after the date of commencement. The date of commencement is March 28, 2007. In this case, the date the application met the requirements of 35 U.S.C. § 371 is not after the date of commencement. Therefore, the date the application fulfilled the requirements of 35 U.S.C. § 371 is March 28, 2007, the date of commencement.

The number of days beginning May 29, 2008, the day after the date fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. § 371, and ending on August 3, 2009, the date the Office mailed an action under 35 U.S.C. § 132, is 432 days.


In view of the prior discussion, the period of delay under 37 C.F.R. § 1.703(a)(1) is 432 days, not 727 days.

Submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged. No additional fee is required.

Applicants are reminded any delays by the Office pursuant to 37 C.F.R. §§ 1.702(a)(4) and 1.702(b) and any applicant delays under 37 C.F.R. § 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Anthony Knight
Director
Office of Petitions